IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Suresh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.1563/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 23-10-2002 in Sessions Case No.13/2002 passed by Sh. Vinay Chawla, Special Judge, SC/ST (PA) Cases, Alwar.

Date of Judgment: February 07, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. J.K.Yogi, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Hardevpuri Goswami for
Mr. Tripurari Sharma, for the complainant.

BY THE COURT:

Asha (fictitious name) a girl of 6 years fell a pray to the lust of appellant. The appellant was put to trial before the learned Special Judge, SC/ST (PA Cases) Alwar who convicted and sentenced the appellant under section 376(2)(f) IPC vide judgment dated October 23, 2002 to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer imprisonment for six months.

2. It is the prosecution case that informant Geeta Devi (Pw.1) submitted a written report on October 12, 2001 at Police Station Kathumar with the averments that on October 9, 2001 her daughter Asha aged 6 years along with other children had gone to the temple but Asha did not return back to the house. On being searched she was found unconscious on the

roof of the temple and blood was oozing from her vagina. Informant Geeta Devi took her daughter Asha to Bharatpur for treatment in the next morning. At Bharatpur she was informed by the Medical Officer that Asha was raped. On returning to village she gathered the villagers and decided to lodge the report. On that report a case was registered and investigation commenced and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge, SC/ST (PA Cases) Alwar. Charges under sections 376 (2)(f) IPC and 3 (2)(v) of SC/ST (PA) Act were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 12 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant in the process of assailing the impugned finding took me through the material on record. A bare look at the evidence adduced at the trial goes to show that age of victim Asha on the date of offence was about 5 to 6 years. As per the report of Medical Jurist Ex.P-5A her hymen was found torn and she was subjected to rape. Potency test of appellant was also performed and as per report Ex.P-8 the appellant was found potent. In her statement victim (Pw.3) stated that the appellant took her to the roof of temple. He gagged her mouth and removed her underwear thereafter he removed his pant and lay over her, thereafter blood started oozing from her vagina.

4. Learned counsel for the appellant canvassed that the incident

took place on October 9, 2001, whereas the FIR was lodged on October 12, 2001 and delay in lodging the FIR was not explained which is fatal to the prosecution case. I find no substance in this submission. The Supreme Court in the catena of decisions held that delay in lodging the report in rape matters is not fatal. From the testimony of informant Geeta Devi (Pw.1), I find that she has explained the delay. She stated that on the date of incident the husband was not in the village and on the next morning she took the victim to Bharatpur for treatment where she came to know that victim was raped. Thereafter she came back to the village and gathered the villagers and decided to lodge the report. Their Lordships of Supreme Court in Harpal Singh Vs. State of H.P. (1981)1 SCC 560 indicated as under:-

> "...The occurrence according to the prosecutrix took place in the night intervening August 22 and 21, 1972. The FIR was lodged on August 31, 1972. The complainant had given reasonable explanation for lodging it after 10 days of the occurrence. She stated that as honour of the family was involved, the members had to decide whether to take the matter to the court or not. It is not uncommon that such consideration delay action on the part of the near relatives of a young girl who is raped."

5. Next contention of learned counsel that the prosecution failed to establish that it was the appellant who committed rape, is also devoid of merit. The victim identified the appellant in the court. Manju (Pw.2) another child witness also stated that it was the appellant who was distributing `Prasad' in the temple and victim remained in the temple alone.

6. In the ultimate analysis, I find that the conclusions arrived at by the learned trial Judge do not have any infirmity.

7. For these reasons, I do not find any merit in the instant appeal and the same stands accordingly dismissed. The conviction and sentence of the appellant under section 376(2)(f) IPC are confirmed.

(Shiv Kumar Sharma)J.

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